In rendering the opinion in the case of *McDonald* v. *Mabee*, Mr. Justice HOLMES makes a concession not heretofore admitted by the Supreme Court of the United States, that something a little short of personal service might constitute due process of law, within the protection of he constitution. This concession may be due to the fact that there are to be found on the statute books of nearly all the states provision for service of process by leaving a copy at the residence of the defendant with some member of the family of suitable age and discretion. Mr. Justice HOLMES says: "Perhaps in view of his technical position and the actual presence of his family in the state a summons left at his last and usual place of abode would have been enough. * * * It is going to the extreme to hold such power gained by service at the last and usual place of abode." The writer is not aware of any case in which the constitutionality of a statute providing for acquisition of jurisdiction by such mode of service has yet been sustained. J. R. R.

POWER OF A NATIONAL BANK TO FOUND A PENSION FUND FOR EMPLOYEES.—Within the last decade in the United States there has been a marked increase in the profit sharing plans, the pension plans, and the general welfare work done by business corporations for their employees. Whether this has been due more to beneficent motives than to pure business foresight it is evident that many business men consider such investments good ones for a corporation from a purely financial viewpoint. "The pension plan attaches the employees to the service and decreases the liability of a strike * * * it makes more certain the continuance of efficient men in the lines of work with which they are familiar * * * the incentive to good conduct is greatly increased." F. A. VANDERLIP, quoted in SQUIER, OLD AGE DEPENDENCY IN THE UNITED STATES. Ch. III. Although there has been considerable debate concerning economic aspects, it does not appear that the question whether such work is ultra vires the ordinary business corporation has been much before the courts.

In *Heinz* v. *National Bank of Commerce* (1916), 237 Fed. 942, the Federal Court of Appeals had to determine whether a national bank had the power to provide a pension fund for its officers and employees. The shareholders had authorized the directors to create such a fund, but it was contended by the plaintiff, a shareholder who asked an injunction against the payment of a lump sum agreed upon in lieu of the pension granted to a retiring president of the bank, that the bank was wholly without power to found such a fund, and hence as the provision was ultra vires and void, the contract to pay the agreed sum was without consideration. In reaching its conclusion the court considered that the judgment of the stockholders and directors, though not conclusive, was entitled to some weight on the question whether such action was within the implied powers of the bank. It recognized that such plans were deemed good business policy in effecting an increase in the character of the service and the loyalty of the employees, and held that the power to create such a fund as a business detail was

included in the clause of the National Banking Act "and all such incidental powers as shall be necessary to carry on the business of banking."

It is well settled that the test of whether a power is impliedly granted to an ordinary business corporation is whether it is one reasonably incident to and necessary to the carrying out of the express powers granted. THOMPSON, CORPORATIONS, §2108, and cases cited, and where the exercise of the power is unchallenged by the state and not prohibited by its charter or the corporation laws of the state, if it has a reasonable tendency to aid in the accomplishment of one or more of the corporate purposes it will be held intra vires. *Colo. Springs Co.* v. *Am. Pub. Co.*, 97 Fed. 843, 38 C. C. A. 433. It need be necessary only in the sense of being appropriate, convenient, and suitable—including a right of reasonable choice of the names to be employed. *Ohio Nat. Gas Co.* v. *Capital Dairy Co.*, 60 Oh. St. 96, 53 N. E. 711; *Flaherty* v. *Portland etc. Society*, 99 Me. 253, 59 Atl. 58; *State* v. *Hancock*, 35 N. J. L. 537; *Malone* v. *Lancaster Gas etc. Co.*, 182 Pa. St. 309, 37 Atl. 932; 3 THOMPSON, CORPORATIONS, §2110 and cases cited. In *Jacksonville etc. Ry. Co.* v. *Hooper*, 160 U. S. 514, 40 L. Ed. 515, it was said: "This doctrine ought to be reasonably and not unreasonably understood and applied, and whatever may fairly be regarded as incidental to, or consequential upon those things which the legislature has authorized ought not, unless expressly prohibited, to be held by judicial construction to be ultra vires." See *Att'y Gen.* v. *Great Eastern Ry.*, 5 App. Cas. 473. That the modern tendency of the great majority of courts is in this direction, see 1 COOK, CORPORATIONS, §3 and cases cited.

National banks are corporations of limited capacity having no powers except such as are given them expressly or by necessary implication by the Acts of Congress passed in relation to such banks. *Calif. Nat'l Bank* v. *Kennedy*, 167 U. S. 362, 42 L. Ed. 198; *Nat'l Bank* v. *Townsend*, 139 U. S. 67, 35 L. Ed. 107; *Bailey* v. *Farmer's Nat'l Bank*, 97 Ill. App. 66: 7 C. J. 807. The statute provides that national banking associations may exercise "all such incidental powers as shall be necessary to carry on the business of banking." U. S. REV. STAT., §5136 (7). These incidental powers so granted have been interpreted to mean those incidental to the things authorized by the Banking Act and not such as are incidental to the banking institutions generally. *Seligman* v. *Charlottesville Nat. Bank*, 21 Fed. Cas. No. 12,642, 3 Hughes 647. It is evident, however, from the decisions construing this clause, that the courts do not understand that this limitation is to be so interpreted as to prevent a national bank from operating according to recognized good business principles unless it is very clear that such was intended to be prohibited. The courts will not prevent a national bank from being a good business man except on clear grounds. Accordingly although the Banking Act expressly prohibits a national bank from purchasing or dealing in the stock of other corporations (*National Bank* v. *Hawkins*, 179 U. S. 364, 43 L. Ed. 1007; *Calif. Nat'l Bank* v. *Kennedy*, 167 U. S. 462, 42 L. Ed. 198), yet such prohibition has been construed to apply to dealing in the sense of speculation, and it has been held that a national bank may loan money on stock as security (*Calif. Nat'l Bank* v. *Kennedy*, supra) or take such stock

as a compromise to avoid apprehended loss. *Nat'l Bank* v. *Case,* 99 U. S. 628, 25 L. Ed. 448. Also that a national bank may enter into a contract with the promoter of a building corporation subscribing for stock in the corporation, which the promoter agreed to repurchase later, where the contract was made as a part of a transaction looking to the securing of adequate and suitable banking offices. *Nashville Nat'l Bank* v. *Stahlman,* 178 S. W. 942, 132 Tenn. 367. A national bank may purchase and hold only such real estate as is necessary for its immediate accommodation in the transaction of its banking business (U. S. REV. STAT. §5137), but under this statute such bank has been held to have the power to erect a building for its own use, and in so doing is not limited to the construction of a building to be used solely for its banking quarters (*Brown* v. *Schleier,* 118 Fed. 981, 55 C. C. A. 475), but may erect a larger building than it requires and rent the space it does not occupy. *Wingert* v. *National Bank,* 175 Fed. 739.

Cases involving the implied power of corporations to provide for pension funds, insurance plans, and such welfare work are relatively few. An implied power will be ascribed to a corporation employing labor to incur expense on account of injuries to their employees in the line of their employment, *Toledo etc. Ry. Co.* v. *Rodrigues,* 47 Ill. 188, 95 Am. Dec. 484. And, it seems, to establish funds for hospitals for the benefit of sick and injured employees. *Eckman* v. *Ry. Co.,* 169 Ill. 312, 48 N. E. 496; *Pittsburg etc. Ry. Co.* v. *Moore,* 152 Ind. 345, 53 N. E. 290; *Pittsburg etc. Ry. Co.* v. *Cox,* 55 Oh. St. 497, 45 N. E. 641; *Vickers* v. *Chicago etc. Ry. Co.,* 71 Fed. 139; *Ringle* v. *Penn. R. Co.,* 164 Pa. St. 529, 30 Atl. 492. So also they may organize relief associations with a provision for a stipulated sum to be paid the family in case of the death of an employee in service. *Harrison* v. *Midland Ry. Co.,* 144 Ala. 246, 40 So. 394; *Maine* v. *C., B. & Q. Ry. Co.,* 109 Iowa 260, 70 N. W. 630; *State* v. *Pittsburg Ry. Co.,* 68 Oh. St. 9, 67 N. E. 93; *Beck* v. *R. R. Co.,* 63 N. J .L. 232. It is not ultra vires for a corporation to use its funds to establish a free library and free books for its employees. *Steinway* v. *Steinway & Sons,* 40 N. Y. Supp. 718, 17 Misc. Rep. 43.

It does not appear that the validity of a national bank pension fund established under the implied powers of the bank has been passed upon before in this country. In England a pension granted pursuant to the resolution of a bank's stockholders authorizing the directors to pay a certain half-yearly pension to the family of a deceased president was held intra vires. *Henderson* v. *Bank,* Law Reports, 40 Ch. Div. 170. In considering the question the court deemed evidence that among banking men the granting of such pensions was considered good business practice of some importance as showing it was a business detail a choice of which was permissible. In *Beers* v. *New York Life Ins. Co.,* 20 N. Y. Supp. 788, the New York Supreme Court held that the trustees of a mutual life insurance company did not have the power to agree to pay a retiring president a salary for life in consideration of past services rendered by him. The above case is easily distinguishable from the principal case in that in the former there was no provision for the pension until after the whole service of the pensioner was over and the pension was not authorized by the stockholders of the company.

On consideration of the trend of modern decisions to the effect that, where the state does not object, a corporation will not be prevented from carrying on its business details according to good business principles unless such is clearly ultra vires, and also giving some weight to the growing opinion among business men that the founding of such a pension fund is a good financial investment for a corporation, it would seem clear that the decision of the principal case is correct. H. S. K.

RECOVERY IN QUASI-CONTRACT FOR BENEFITS PROCURED BY FRAUDULENT MARRIAGE.—The plaintiff had gone through forms of marriage with the defendant's intestate, honestly believing she was marrying him, while he knew that he had a living wife and therefore could not marry. They lived together as man and wife until his death, and it was not until after such death that she learned that he had a prior wife still living. In a suit for money advanced and services rendered, she was given a verdict for both claims. *Held*, that the judgment on such verdict should be affirmed. *Sanders* v. *Ragan* (N. C. 1916), 90 S. E. 777.

No question was raised as to the money advanced, the advance presumably being regarded as evidence of a genuine contract of loan. The appeal was concerned only with the recovery for the services. It is apparent that the services were rendered in the mistaken belief that the status of the plaintiff imposed upon her a duty toward the defendant's intestate; and since, if her status had been what she believed it to be, she would have owed such services to her husband, her mistaken belief which induced her to render the services was a mistake of fact which affected not merely the policy of what she should do, but rather her legal duty as a wife. The plaintiff's case was made still stronger by the fact that her ignorance of her true status was the result of the husband's fraudulent misrepresentations. To so induce a person to enter into a void marriage was an actionable wrong for which the wrongdoer was liable in an action for fraud and deceit. However, that right of action in tort died with the tort-feasor; and after the tort-feasor's death, the plaintiff could recover, if at all, only in assumpsit for the value of the services rendered. Accordingly, the court deciding the principal case allowed recovery in assumpsit on the ground that the defendant's intestate had been unjustly enriched at the plaintiff's expense.

When money not justly due has been paid under a plain mistake of fact, which money would have been actually due if the facts had existed as believed, recovery has been generally allowed. *Stuart* v. *Sears*, 119 Mass. 143; *Lane* v. *Pere Marquette Boom Co.*, 62 Mich. 63, 28 N. W. 786; *Simms* v. *Vick*, 151 N. C. 78, 65 S. E. 621, 24 L. R. A. N. S. 517. And it seems, in the absence of adjudication on the question, that if the element of fraud were absent in the principal case, recovery should be allowed on such facts for services rendered, in the same way that recovery of money was allowed in the cases cited supra. But in the case under discussion, fraud is at the very basis of the mistake. The general rule is that when one by fraud induces another to pay him money not justly due, the person so wronged